



CALIFORNIA STATE PERSONNEL BOARD

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ARNOLD SCHWARZENEGGER, Governor



CALIFORNIA STATE PERSONNEL BOARD MEETING

801 Capitol Mall
Sacramento, California

Public Session Location – 801 Capitol Mall
Sacramento, California, Room 150
Teleconference – 320 West 4th Street
Los Angeles, California, Suite 620

Closed Session Location – 801 Capitol Mall
Sacramento, California, Room 141
Teleconference – 320 West 4th Street
Los Angeles, California Suite 620

SUMMARY MINUTES – DECEMBER 20, 2005

MID MONTH SUMMARY MINUTES¹

DECEMBER 20, 2005

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

Members present:

William Elkins, President
Maeley Tom, Vice President
Ron Alvarado, Member
Sean Harrigan, Member

2. REPORT OF THE EXECUTIVE OFFICER – Floyd D. Shimomura

A. The "brown bag" lunch with a group of state EEO officers has been rescheduled at the request of the EEO officers. It will be rescheduled for February.

B. After January 1, 2006, the SPB's budget will be handled by a different budget unit at Finance ("Admin." rather than "Cor/Gen"). We plan to meet with our new DOF budget analysts in early January to resolve any concerns they may have about the SPB's base budget. One issue we would like to discuss is how we can fund our participation in joint personnel audits with DPA.

C. Beginning in January, CPS will make quarterly reports on its two contracts with the SPB and other state departments.

D. The Executive Officer will be speaking to a group of personnel officials from the Republic of China (ROC) in Taiwan at 11:00 a.m. today in a program sponsored by UC Davis.

3. REPORT OF THE CHIEF COUNSEL – Presented by Bruce Monfross, Senior Staff Counsel, in absence of Elise Rose.

- The Sacramento Superior Court recently issued a decision in Dykes v. SPB/DPA/DGS, sustaining the Board decision sustaining plaintiff's appeal, and finding that the appeal should have been filed with DPA, not the SPB.

¹ The Minutes for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

- SPB staff have been working with DPA to clarify certain Post and Bid matters addressed by DPA in a PML issued by that organization.
- The Chief Counsel's Office has submitted a supplemental brief to the Public Employees' Relations Board, requesting that PERB dismiss the unfair labor practice charge filed against the SPB in IUOE v. SPB, on the grounds that the California Supreme Court decision in DPA v. SPB has decided the issue in SPB's favor.
- The parties have stipulated to the issuance of a writ of mandate in the Bron v. SPB case, remanding the matter back to the Board to consider the parties' intent in executing a workers' compensation settlement agreement on appellant's entitlement to back pay. The Chief Counsel's Office will prepare a resolution for the Board's consideration after the writ is properly served.

4. NEW BUSINESS

NONE PRESENTED

5. REPORT ON LEGISLATION – Sherry Hicks

NONE PRESENTED

CLOSED SESSION OF THE STATE PERSONNEL BOARD

6. DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]

7. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code sections 11126(e)(1) and 18653.]

State Personnel Board v. Department of Personnel Administration,
California Supreme Court Case No. S119498.

State Personnel Board v. California State Employees Association,
California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court,
Case No. S125502.

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA,
Sacramento Superior Court No. 04CS00049.

SEIU Local 1000 (CSEA) v. State Personnel Board,
Sacramento Superior Court No. 05CS00374.

The Copley Press, Inc. v. San Diego Superior Court,
California Supreme Court No. S128603.

Union of American Physicians and Dentists v. Department of Corrections, et al.,
United States District Court, Northern District of California.

8. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

9. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor.
[Government Code section 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

**10. DISCUSSION OF COMING BOARD MEETING SCHEDULE OF
JANUARY 6, 2006, IN SACRAMENTO, CALIFORNIA**

NONE

BOARD ACTIONS:

**11. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF
NOVEMBER 15, 2005**

ACTION: ADOPTED

VOTE: Elkins, Tom, Alvarado, Harrigan – Aye

12. EVIDENTIARY CASES - (See Case Listings on Page 8-13)

**13. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE
SECTION 18671.1 EXTENSION - (See Minutes Page 17-18)**

ACTION: ADOPTED

VOTE: Elkins, Tom, Alvarado, Harrigan – Aye

14. NON-EVIDENTIARY CASES - (See Case Listings on Page 14-15)

15. NON-HEARING CALENDAR

Classification proposals would have been made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff.

**A. BOARD ITEMS PRESENTED BY STATE PERSONNEL BOARD OR
DEPARTMENT OF PERSONNEL ADMINISTRATION TO ESTABLISH,
REVISE OR ABOLISH CLASSIFICATIONS, ALTERNATE RANGE
CRITERIA, ETC.**

NONE

**B. ABOLISHMENT OF CLASSES THAT HAVE HAD NO INCUMBENTS
FOR MORE THAN TWO YEARS. DEPARTMENTS THAT UTILIZE THE
CLASS AS WELL AS THE APPROPRIATE UNION CONCUR WITH THE
ABOLISHMENT OF THESE CLASSES.**

NONE

16. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

NONE

17. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Minutes served to inform interested individuals and departments of proposed and approved CEA position actions.

A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION

DEPUTY DIRECTOR, MEMBER OFFICES DIVISION

The Legislative Counsel Bureau proposes to reallocate the existing CEA allocation titled Deputy Director, Legislative Data Center Customer Services Division to the above- mentioned position. The Deputy Director, Member Offices Division will be responsible for providing information technology products and services to meet the needs of the member Capitol and district offices of the California Legislature.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

NONE

ACTION: NOTED

18. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

19. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE

20. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

NONE PRESENTED

21. BOARD ACTIONS ON SUBMITTED ITEMS - (See Minutes - Page 16)

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on these Minutes under Evidentiary Cases.

LUNCH

(11:30 a.m. – 1:00 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(1:00 p.m. – 4:30 p.m.)

22. SEXUAL HARRASSMENT PREVENTION TRAINING

Training was made available to Board members and staff who needed such training to comply with state law.

A D J O U R N M E N T

12. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

(1) **GARY GARFINKEL, CASE NO. 98-3128RBA**

Appeal for determination of back salary, benefits and interest

Classification: Deputy Attorney General IV

Department: Department of Justice

Proposed decision rejected July 13, 2005

Transcript prepare

Pending oral argument October 3, 2005, Sacramento

Oral argument continued

Oral argument heard November 1, 2005, San Diego

Case ready for decision by FULL Board

NO ACTION

B. CASES PENDING

ORAL ARGUMENTS

These cases would have been on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

NONE

C. CHIEF COUNSEL RESOLUTIONS

NONE

COURT REMANDS

This case would have been remanded to the Board by the court for further Board action.

NONE

STIPULATIONS

These stipulations would have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These were ALJ proposed decisions submitted to the Board for the first time.

On December 20, 2005, the Board adopted the following decisions presented by Bruce Monfross, Senior Staff Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan – Aye

- (1) SUE BEECK, CASE NO. 04-0511E**
Appeal from discrimination and retaliation
Classification: Academic Instructor
Department: Department of Corrections
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the appeal.
- (2) SENWEE BRADLEY, CASE NO. 05-3114**
Appeal from rejection during probationary period/dismissal
Classification: Accounting Technician II
Department: California State University Channel Islands, Camarillo
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the appeal.
- (3) ROBERT BURKS, CASE NO. 05-1739**
Appeal from constructive medical termination
Classification: Officer, CHP
Department: Department of California Highway Patrol
ACTION: The Board rejected the ALJ's Proposed Decision dismissing the appeal and remanded the case back to the ALJ.

- (4) **SHAMARIE CONLEY, CASE NO. 05-2029**
Appeal from five percent reduction in salary for six months
Classification: Correctional Officer
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the reduction in salary.
- (5) **RONALD FRANKLYN, CASE NO. 05-2105**
Appeal from 20 working days suspension
Classification: Officer, CHP
Department: Department of California Highway Patrol
ACTION: The Board rejected the ALJ's Proposed Decision sustaining the suspension. The Board will hear the case itself.
- (6) **MATHEW GERDES, CASE NO. 05-2008**
Appeal from five percent reduction in salary for 15 months
Classification: Correctional Officer
Department: Department of Corrections
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the reduction in salary but modified the penalty to a five percent reduction in salary for 6 months.
- (7) **LEE KENDRICK, III, CASE NO. 04-1620**
Appeal from dismissal
Classification: Transportation Surveyor, CT
Department: Department of Transportation
ACTION: The Board adopted the ALJ's Proposed Decision denying the appellant's motion to suppress evidence.
- (8) **RICK LINSON, CASE NO. 04-2750**
Appeal from demotion
Classification: Captain, CHP
Department: Department of California Highway Patrol
ACTION: Case was withdrawn by ALJ. Not for Board consideration.
- (9) **GILBERT E. MONTALVO, CASE NO. 05-2429**
Appeal from three workdays suspension
Classification: Workers' Compensation Claims Adjuster
Department: State Compensation Insurance Fund
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the suspension.

- (10) **SOURIS NISHI, CASE NO. 05-0944**
Appeal from rejection during probation
Classification: Office Technician (Typing)
Department: Department of General Services
ACTION: The Board adopted the ALJ's Proposed Decision affirming the rejection and denying the appeal.
- (11) **KERRI POST, CASE NO. 05-0471**
WAYNE BERNARD, CASE NO. 04-2994
Appeals from 15 days suspension and dismissal
Classification: Officer, CHP
Department: Department of California Highway Patrol
ACTION: The Board adopted the ALJ's Proposed Decision revoking the suspension and dismissal.
- (12) **JAMES SHIPMAN, CASE NOS. 04-0129 & 05-0073E**
Appeal from 30 calendar days' suspension and whistleblower retaliation complaint
Classification: Correctional Counselor I
Department: Department of Corrections and Rehabilitation
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the suspension and dismissing the whistleblower retaliation complaint.
- (13) **GORDON SMITH, CASE NO. 05-2182**
Appeal from rejection during probation
Classification: Caltrans Equipment Operator II
Department: Department of Transportation
ACTION: The Board adopted the ALJ's Proposed Decision affirming the rejection and denying the appeal.
- (14) **RICHARD WALL, CASE NO. 05-2762**
Appeal from medical separation and disability discrimination
Classification: Firefighter Crew Chief
Department: Military Department
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the appeal.
- (15) **JOSEPH WILMES, CASE NO. 05-2460**
Appeal from rejection during probation
Classification: Program Representative I
Department: Department of Consumer Affairs
ACTION: The Board adopted the ALJ's Proposed Decision affirming the rejection and denying the appeal.

(16) DEVON YOUNG, CASE NO. 04-2383

Appeal from five working days suspension

Classification: Public Safety Dispatcher II

Department: Department of California Highway Patrol

ACTION: The Board adopted the ALJ's Proposed Decision sustaining the suspension.

Proposed Decisions Taken Under Submission At Prior Meeting

These would have been ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

NONE

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board voted to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

On December 20, 2005, the Board adopted the following decisions presented by Bruce Monfross, Senior Staff Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan – Aye

(1) DELWIN BROWN, CASE NO. 04-1665RP

MARCEL BERRY, CASE NO. 04-1667RP

STEVE CHIU, CASE NO. 04-1773RP

LINDA BERSHELL-BRIDGES, CASE NO. 04-1777RP

ROBERT DUTRA, CASE NO. 04-1800RP

DANIEL TORRES, CASE NO. 04-1714RP

Appeal from dismissals

Classification: Youth Correctional Officer, Youth Correctional Counselor and Senior Youth Correctional Counselor

Department: Department of the Youth Authority

ACTION: DENIED

- (2) **JERALD ELLIOTT, CASE NO. 00-3394PA**
Appeal from dismissal
Classification: Information Technology Consultant
Department: California State University, San Diego
ACTION: DENIED
- (3) **JOHN GARZA, CASE NO. 05-1328P**
Appeal from official reprimand
Classification: Correctional Lieutenant
Department: Department of Corrections
ACTION: DENIED
- (4) **JUDY GUERRERO, CASE NO. 05-0292EP**
Appeal from denial of discrimination complaint
Classification: Labor Relations Manager II
Department: Department of Forestry and Fire Protection
ACTION: DENIED

WHISTLEBLOWER NOTICE OF FINDINGS

The Board would have voted to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases were pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

- (1) **EDUARDO PEREZ, CASE NO. 05-0763A**
Appeal from five percent reduction in salary for six months
Classification: Parole Agent I (Adult Parole)
Department: Department of Corrections
- Proposed decision rejected November 1, 2005
Pending transcript
NO ACTION

14. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff.

WITHHOLD FROM CERTIFICATION
CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

NONE

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases would have been heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional.

NONE

C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS

Cases would have been heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff.

EXAMINATION APPEALS

NONE

MINIMUM QUALIFICATIONS

NONE

MERIT ISSUE COMPLAINTS

NONE

**D. RULE 211 APPEALS
 RULE 212 OUT OF CLASS APPEALS
 VOIDED APPOINTMENT APPEALS**

Cases would have been heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board would have been presented recommendations by Appeals Division staff for final decision on each request.

NONE

PETITIONS FOR REHEARING CASES

On December 20, 2005, the Board adopted as indicated below the following decision presented by Gladys Washington, Chief, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan – Aye

- (1) PENNY TAYLOR, CASE NO. 04-2877P**
 Classification: Public Safety Dispatcher II
 Department: California Highway Patrol
 Issue: Whether SPB erred in upholding the withhold taken by the CHP.
 ACTION: DENIED

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

3. TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

NO ACTION

4. HEARING – Personal Services Contract #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

NO ACTION

5. HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

NO ACTION

6. GARY GARFINKEL, CASE NO. 98-3128RBA

Appeal for determination of back salary, benefits and interest. Deputy Attorney General IV. Department of Justice (Hearing held November 1, 2005)

NO ACTION

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

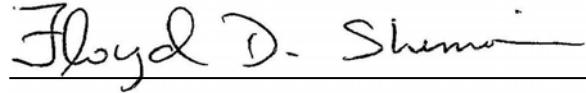
WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on December 20, 2005.

VOTE: Elkins, Tom, Alvarado, Harrigan – Aye

A handwritten signature in cursive script, reading "Floyd D. Shimomura", written over a horizontal line.

Floyd D. Shimomura
Executive Officer
California State Personnel Board